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# Organising the Finances For and the Finances From Transnational Corporate Bribery

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## Abstract

This article analyses the finances for and the finances from corporate bribery in international business transactions and how they are organized. Transnational corporate bribery involves non-criminal commercial enterprises that operate in licit markets but that use corrupt means to win or maintain business contracts in foreign jurisdictions. This article first considers what needs to be financed, how much finance is needed, and how the bribes can be generated and distributed. Second, the article considers the different forms of proceeds that emerge out of the bribery, how offenders must conceal the derivation of funds from these crimes while also retaining control over them, and how they must overcome particular obstacles. Finally, the article discusses responses to the proceeds of bribery and related anti-money laundering provisions, before analysing actual and potential mechanisms for intervening with the finances for and from transnational corporate corruption.

## Introduction

Transnational corporate bribery (aka ‘foreign/overseas/international bribery’) involves commercial enterprises (i.e. primarily legitimate corporations) that operate in licit transnational markets and use illicit (financial) transactions/exchanges to win or maintain business contracts in foreign jurisdictions. This form of corruption has since the late 20<sup>th</sup> Century emerged as a priority concern for international and world society (e.g. intergovernmental organisations such as the OECD, UN, and EU as well as non-governmental anti-corruption organisations such as Transparency International and Global Witness, amongst others). Such organisations have been ‘grappling’ over the creation of normative anti-bribery frameworks to harmonise international standards in combatting bribery in international business (Lord, 2015; see also Clark, 2007). The product of this (US-induced<sup>1</sup>) grappling was primarily the Organisation for Economic Cooperation and Development’s (OECD) *Convention on Combating Bribery of Foreign Public Officials in International Business Transactions 1997* (hereafter the OECD Anti-Bribery Convention) which is accompanied by a rigorous programme of peer-review monitoring and expert evaluations coordinated by intergovernmental organizations (GRECO, 2007; OECD, 2012) and the evaluative reports of (inter)national non-governmental organizations (Transparency International, 2015a) (see Lord, 2014a, for a detailed analyse all related international legal frameworks). This international response places nation-states under notable scrutiny making responding to transnational corporate bribery a domestic priority.

Transnational corporate bribery is primarily committed for organisational gains (i.e. for the benefit of the corporate entity), though may variably benefit the individuals involved on the supply side, either directly (as a ‘cut’) or indirectly, via promotion or job retention. At the ‘grand’ level, these gains include the awarding or continuance of multi-million Euro contracts for the corporation. Such bribes take myriad forms, from monetary payments (potentially of €billions) and gifts such as luxury watches to FIFA delegates through to less direct hospitalities (including attendance at conferences in exotic locations, shopping trips, tickets for sports events etc.) and to favours such as the provision of prostitutes or current/future employment for self, family or social network. At the ‘petty’ level, bribes include small-scale payments, often cash, that facilitate certain business activities (e.g. obtaining

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<sup>1</sup> When the US introduced the Foreign Corrupt Practices Act 1977 it was expected that other nation-states would follow suit. This did not immediately occur and so enforcement of the Act did not follow until the creation of the OECD Anti-Bribery Convention created international pressure for other countries to implement analogous legislation.

building permits or expediting movement through borders) but which in the aggregate can be substantial amounts – such bribes are commonly referred to as ‘facilitation payments’. They are criminalised in some jurisdictions (e.g. UK) but not in other key exporting jurisdictions such as the US, and this creates tensions over how (and indeed whether) to enforce unharmonised laws. In all cases of bribery, there is an inherent illicit transaction (a specific event) or relationship (an on-going state) between at least two willing or at least consenting active/passive actors that leads to an advantage in business for the corporation (see Lord, 2014 for a more detailed analysis).

In this article, we foreground the finances and funds involved in such transnational corporate bribery and argue that focusing on the ‘money component’ can plausibly offer a *situational* route to intervention. We thus examine the finances central in those behaviours that involve illicit relations of exchange between two (often consenting) actors whereby one corporate actor (or group of actors) offers, gives, or promises something of perceived value to another requesting, receiving, or soliciting ‘public’ actor (or group of actors) to induce improper behaviour in the context of international business<sup>2</sup>. There are other dimensions of corruption but we focus here on the ‘grand corruption’ aspect of transnational corporate bribery as the money trail of such illicit transactions has received much campaigning and these are important strategic dimensions, as recognised in G7/20 and governmental (e.g. UK Anti-Corruption Strategy) initiatives on understanding who the beneficial owners are of corporate vehicles used for illicit finances. Although the European Union has been active on ‘beneficial ownership’ and bank account registers, it is not clear what will be the crime reductive benefit if other countries like the British Virgin Islands and Cayman Islands do not follow suit. This presents a challenge to the global anti-money laundering process. There are other areas of transnational corporate bribery where transnational control harmonisation is important, but the grand corruption dimensions of transnational corporate bribery is certainly one of them unless steps are taken to prevent noncompliant jurisdictions from creating risks in other countries.

We focus on the UK as a generator and venue for corruption where since 2002 it has been a criminal offence for companies and their employees anywhere in the world to bribe foreign officials (including politicians) in the context of international business transactions. This offence was introduced via an amendment to the Anti-Terrorism, Crime and Security Act 2001 that imported a foreign element to the ageing Prevention of Corruption Acts (1889 – 1916). This amendment brought the UK’s legal framework in line with international legal requirements. In the UK, the introduction of the Bribery Act 2010 consolidated and strengthened the previously fragmented framework and created the most wide-reaching anti-bribery legislation on the globe. This legislation created discrete offences of ‘bribing another person’ (offering, promising or giving a financial or other advantage), of ‘being bribed’ (requesting, agreeing to receive or accepting a financial or other advantage), and of ‘bribing foreign public officials’ in addition to making it a criminal offence for a commercial organisation to fail to prevent bribery within or by their organisation. The focus in this article is primarily on the ‘supply side’ of bribery, that is, those UK corporations, or employees, subsidiaries and/or agents acting on behalf of these corporations, that give, offer or promise a bribe or inducement to a foreign public official usually to lead those officials to breach their duties. (Though the article also considers those on the ‘demand/recipient side’).

At the time of writing, the most recent UK case to be concluded through criminal prosecution and sanctioning for a substantive bribery offence (i.e. not a ‘failure to prevent bribery’ corporate offence) involved printing company Smith and Ouzman Ltd., its directors, an employee and an agent, who made a series of payments totalling £395,074 from 2006 to 2010 to public officials in Kenya and Mauritania

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<sup>2</sup> We would argue that those other behaviours beyond bribery that people call ‘corrupt’ are better conceptualised in other ways such as professional misconduct (e.g. police cover-ups such as that following the deaths at Hillsborough) or theft at work (e.g. embezzling public funds, as arguably in the MPs expenses scandal).

in order to induce the awarding of business contracts<sup>3</sup>. The company specialises in security documents such as ballot papers and certificates, and was convicted following the confiscation of email evidence that indicated the Directors used the code word ‘chicken’ for bribes in discussions with their Kenyan agent. However, it is not only small and medium sized enterprises that engage in bribery to win business contracts. Large commercial enterprises in the UK are also being implicated in the bribery of foreign public officials to obtain business, with the defence and engineering company Rolls Royce being the latest<sup>4</sup>. Rolls Royce allegedly offered bribes to the state oil producer, Petrobras, in Brazil, to secure a \$100m contract to provide modules of energy generation for the oil company’s platforms. (Though an alternative possibility is that these bribes were extorted, or given under the assumption that the contract would not be awarded on its merits). The UK’s Serious Fraud Office (SFO) opened a criminal investigation in December 2013, which is on-going, as are many of these long-lived cases<sup>5</sup>.

The basic ‘organisation’ of the finances of such bribery transactions/relations is generally understood. It involves the generation/diversion of internal corporate funds via variably complex means to fund bribes and inducements (e.g. slush funds hidden within obscure accounts to make cash pay-offs, or the inclusion of ‘kickback’ schemes as part of contracts). However these processes, relations and money flows have not been empirically evidenced or analysed. Furthermore, the finances that are generated out of bribery, that is, after the bribes have been paid, can take many direct and indirect forms but have not been sufficiently conceptualised. The primary objective of this article is to consider these issues around the organisation of the finances for, and finances from, transnational corporate bribery, and it specifically analyses: (1) what needs to be financed, how much finance is needed, and how the bribes can be generated and distributed; and, (2) the different forms of proceeds that emerge, how offenders can and must conceal the derivation of funds from these crimes while also retaining control over them, and how they must overcome particular obstacles and problems posed by controls (such as anti-money laundering). We do not present fresh direct research evidence but aim to provide hypotheses as to the financial underpinnings of transnational corporate bribery and present useful analytical models to account for necessary and contingent conditions for the bribery commission process. We draw upon earlier empirical research and expertise into transnational corporate bribery and economic/financial crimes more generally to present an analytical and conceptual framework for investigating the organization and intervention of such corruption. The article also discusses the current enforcement framework for the proceeds of bribery and related anti-money laundering provisions, alongside actual and potential mechanisms for intervening before and after corrupt payments, in an effort to enhance situational prevention and the reduction of future bribery.

## Understanding ‘organisation’ and how finances are ‘organised’

Unlike the illicit markets that are the normal focus of money laundering studies, transnational corporate bribery always occurs within legitimate markets and is committed by otherwise legitimate businesses (Lord, 2014). That is, it is legitimate occupational positions (e.g. as sales representatives – from director-level to mid-level within a procurement department of a trans-national business), organisational settings (e.g. legitimate engineering, resource extraction or defence companies operating in international markets) and business practices/processes (e.g. buying and selling products or services) that create criminal opportunities (e.g. when suitable targets become readily available and there is a lack of capable guardianship) and provide ‘ready-made’ markets, structures and social networks (pre-existing or ephemeral) through which to conceal illicit behaviours such as bribery.

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<sup>3</sup> <https://www.sfo.gov.uk/cases/smith-ouzman-ltd/>

<sup>4</sup> <http://www.theguardian.com/business/2015/aug/30/rolls-royce-cooperate-brazil-investigation-petrobras-bribery>

<sup>5</sup> <https://www.sfo.gov.uk/2013/12/23/statement-rolls-royce-2/>

Opportunity does not mean that actual bribery will happen; even if contractors are willing to take the funds, some or all potential bribers might not see the opportunities to bribe or may evaluate the risks and potential consequences of doing so as too high. They may also have ethical/corporate reputational objections to bribery or may be making enough money legitimately to turn down the opportunities. (How 'rational' choices are made under certain conditions to make illicit payments depends on the cognitive frames of those potential bribers). However, the combination of apparent virtue and actual vice has long been recognised as a context within which deviant/criminal behaviour can occur (see Ross, 1907; Bonger, 1916; Sutherland, 1983) and it is critical to understand how (and why) some legitimate (appearing) actors 'make the most of' some opportunities that arise some of the time under particular conditions as part of their legitimate business activities, and how the associated subsequent behaviours are organised and financed. However, it should also be noted that some contract-awarders at high or middle levels may be extortioners of bribes rather than passive recipients – implicit in much of the development literature is the developing world as 'victim' rather than as 'extortionist'.

In approaching such an understanding of how the finances for and from bribery are organised, and how opportunities for criminal behaviour organically emerge or are actively manufactured, we need to recognise the interplay between the following levels of analysis: social-structural (e.g. economic/social/market forces); institutional (e.g. organisational cultures, pressures and conditions); and individual (e.g. the symbolic interactions of employees within their social networks and their cognition of particular signs). However, given the difficulties in accessing corporate subsystems for empirical research, it is hard to analyse the natural environments and settings of offending behaviour and therefore to understand and test 'adequately' the motivations of offenders. A more pragmatic approach is to consider the particular crime events (rather than the criminality of a particular context or person) and how they are shaped by these various levels of analysis. Thus, the focus on finances makes no theoretical assumptions about the nature of the offender, whether rational economic actors or otherwise, or the risks that may or may not be inherent in different activities. The focus on finances is concerned with how such involved finances are 'organised' (i.e. what is needed and why).

Criminological theory provides a useful lens through which to analyse these multiple levels. More specifically, in order to analyse how criminal actions are accomplished and opportunities realised, Levi (2008) provides a useful process model developed in relation to the organisation of fraud. This model draws upon earlier work from Levi and Maguire (2004: 457) where it was argued that it is important to develop 'a careful and comprehensive analysis of the nature of the problem to be addressed, including developing a clear understanding of the various crime scenes, actors and their resources'. 'Crime script analysis' operationalizes this, illuminating the dynamics and organisation of such activities within conducive settings, by enabling an understanding of the 'scripts' which criminals go through (i.e. the sequence of actions used by offenders) in the crime-commission process – this entails an analysis of the 'routine activities' of the crime commission process (e.g. how do motivated offenders, targets and a lack of capable guardianship converge in time and space) and the patterns of behaviour that may indicate likely areas of criminal behaviour (see for example Zanella, 2013, in relation to corruption in public procurement specifically; and Clarke, 1997, Benson et al., 2009, Benson and Simpson, 2015, for application to comparable white-collar and occupational crimes).

This is important, as corporate bribery is 'parasitical' on legitimate business practices where bribes can be conveniently concealed behind the daily, routine behaviours of the offenders' legitimate occupations – this makes both detection and proof to a criminal standard of certainty difficult for regulators and compliance actors, and for criminal courts. In other words, criminals become aware of opportunities as they engage in their normal legitimate activities, finding 'targets' in familiar places with opportunities most likely to be taken advantage of when they are closer to areas of familiarity



(see Brantingham and Brantingham, 1991 – although applied here to ‘conventional crime’, the logic is also applicable to corporate crimes). In this sense and in the nomenclature of crime pattern theory, bribery is most likely to take place at the *edges* (e.g. the less regulated and less transparent areas of business activities where key actors interact - such as the use of Intermediaries/agents to provide access to external sources) of commonly trodden *paths* (e.g. the procedures and networks that establish communication or business relations with others) between key *nodes* (e.g. the cooperating or interacting actors in the bribery transaction such as a corporation and a foreign public official or set of officials responsible for awarding particular contracts) in the offenders’ network (see Benson et al., 2009). Understanding how opportunities emerge in this way has implications for how the finances for and from bribery must be organised and we must therefore understand the organisation of the finances of bribery in terms of ‘how would-be offenders confront problems of gaining finance, gaining access to crime opportunities, and retaining their freedom and crime proceeds’ (Levi, 2009: 225).

### Necessity and contingency in the bribery commission process

As figure 1 indicates, we can think of a bribery transaction or relation as a process that requires inputs (e.g. the creation of funds that can be used to finance the supply-side of the bribery, whether this is a cash payment or some other tangible inducement) and which generates outputs (e.g. a particular business contract or other tangible advantage) and outcomes (e.g. the continuance of business in a particular sector or market). This is a process that requires analysis of:

- i. the *necessary* elements and mechanics of the bribery commission process. Here we must ask questions such as:
  - a. Scripts: what is the sequence of events or actions that offenders must go through in order to be able to carry out bribery? What are the ‘scripts’ that they must act out before, during and after the transaction? Including, if it reaches that stage, accounts given to private sector auditors, the media, and criminal/regulatory investigators. (The stage at which such events are anticipated by those who contemplate offending is itself an interesting empirical issue, which falls outside the scope of this article.)
  - b. Activities: Are there particular routines or patterns in their occupational roles that are more susceptible to facilitating or concealing bribery?
  - c. Opportunities/processes: which business practices and processes are most conducive to providing opportunities to bribe, how are they structured and how do they emerge or how are they manufactured?
  - d. Skill sets, knowledge and expertise: for offenders to recognise bribery opportunities and realise them, certain cognitive and behavioural capacities are required, but what are these?
- ii. the *contingent* conditions that shape the nature of the finances for and from the bribery transactions and here we must ask questions such as:
  - a. Enablers/facilitators: which actors or tools (un/wittingly) facilitate the bribery beyond those directly involved in the transaction and how are such actors/tools identified as co-operators and collaborators by direct offenders?
  - b. Money laundering/concealment: how do cooperating offenders conceal the flows of monies for or from illicit transactions such as reinvesting profits for future bribes or incorporating profits in the corporate finances?
  - c. Situations and contexts: how do social-structural, institutional and immediate contexts shape individual behaviours and provide for conducive conditions for offending?

## FIGURE 1 ABOUT HERE

The *area of necessity* reflects those processes, activities and interactions that *must* occur for the bribery to take place; but such criminal activities can only be carried out should opportunities arise under conducive conditions. For example, drawing upon routine activities perspective, we can see that three elements must combine: a specific situation (e.g. a vulnerability in the procurement chain converging at a time and location), a target (e.g. the perceived simplicity of bribery through hospitalities), and the absence of capable guardians (e.g. inadequate anti-corruption regulation and oversight) – to create the opportunity for successful offending. However, necessity is constituted of more than the convergence in time and space of these three elements. Also necessary is a subjective interpretation by an offender that a bribery opportunity is available; the actualisation of this interpretation is dependent on the offender possessing the specific skills, knowledge and expertise to realise an opportunity. That is, being ‘motivated’ in the context of an opportunity and lack of guardianship is not enough. In this sense, we can begin to organise our thinking to consider bribery in terms of the ‘skill sets, contacts, start-up capital, and running costs that they require’ (Levi, 2009: 231).

The *area of contingency* reflects an appreciation of the interplay between individual, organisational/institutional and wider structural influences on the creation of bribery opportunities and propensities to offend (e.g. corporate cultures of implied consent to illicit behaviour, and complex decision-making structures that facilitate unethical decisions as shaped by demands for economic success – which may or may not be modified by ethical training, especially in the aftermath of scandal) and the creation and maintenance of networks (e.g. how do middle-managers in business identify prospective corrupt partners or recruit those with money laundering expertise). In addition, staff working for the firms must also identify the situation as an opportunity for bribery and must be able to conceive of how to do it, including what words to use to enable their targets to participate as collaborators. We do not claim to have identified a complete or comprehensive set of contingent influences but the following are likely to significantly shape the organisation of the bribery and more specifically the finances that are needed and that are generated:

1. Purpose and form of bribery:
  - a. Grand or petty bribery? Are the bribes monetary (e.g. cash, kickbacks) or non-monetary, even invisible to outsiders (e.g. gifts, services, favours to be repaid at some future date)? Is the intent to obtain a contract or facilitate business? (Bribery may relate to a discrete, distinct outcome such as obtaining a particular business contract but the outcomes of bribery may also be less obvious, such as when small payments at borders expedite normal business activities)
2. Nature of criminal/social network:
  - a. Which level of employees are involved (e.g. ‘ordinary employees’, ‘middle-managers’ and/or ‘board/executives’)? Does the bribery involve individual actors, small groups within and/or outside of the corporation, or more extensive networks?
3. Nature of organisation:
  - a. How simple or complex on a scale are the human and/or financial structures used? Does it involve the use of corporate vehicles/offshore accounts, intermediaries and agents, and so on?

4. Level of pervasiveness:
  - a. Is the bribery pervasive within the corporation? Does it involve isolated, discrete incidents or systemic/on-going states and conditions?
5. Level of intent:
  - a. Is the bribery pre-planned well in advance or is it more organic and responsive (i.e. are the bribes, favours and/or demands on a 'slippery slope')?
6. Size of business:
  - a. Does the bribery occur within small and medium enterprises or within larger corporations)?

These factors all shape the finances that are needed or generated and how the bribery transactions and relations are organised. It is not possible here to provide a comprehensive set of all possible realities within this very broad set of conditions. However, with these factors in mind, the following sections analyse the organisation of the finances for and from transnational corporate bribery and throughout consider the interplay between the necessary components of the crime commission process and the contingent conditions that create conducive settings for offending behaviour.

## The Finances For Transnational Corporate Bribery

This section considers three main questions, namely:

- A. What needs to be financed?
- B. How much finance is needed?
- C. How are the processes inherent within this organised to generate and distribute these finances in order for corporate bribery to take place?

Bribery, as with all human behaviours, is 'situated action' that must be understood within particular contexts and organisational cultures (i.e. the process of crime commission cannot be detached from its cultural context, though we may seek to identify common referents in comparable cases across contexts). Key components, processes and features of corporate bribery, as with many white-collar crimes, include: i. the offenders have legitimate access to the location(s) where the bribery takes place as well as to corporate resources/finances as part of their daily activities and employment – this is a necessity since, without a legitimate occupational position, the bribery cannot occur. However, the place where the bribery is agreed may not be that where the financial interchange(s) takes place, and in principle the latter may involve multiple jurisdictions; ii. the offenders are spatially separated from the ultimate victims, meaning that as they operate in their corporate subsystems they are able, if necessary, to 'neutralise' and/or 'rationalise' concerns over any potential victims, such as the unknowing public in those countries where funds are diverted to private hands or where inferior products end up; and, iii. the actions of the offenders have a superficial appearance of legitimacy, as a bribe can be easily concealed as an otherwise legitimate financial transaction which can circumvent routine detection mechanisms (see Benson and Simpson, 2015: 101). These features are central because bribes, like some other forms corporate and white-collar frauds, would be unsuccessful if they did not look sufficiently like legitimate activity not to stand out as 'out of place' to even slightly capable and motivated guardians<sup>1</sup>, and this gives some business offenders a structural advantage over



other types of offenders (Levi, 2015: 11).

#### TABLE 1 HERE

Since the introduction of the foreign bribery offence in the UK in 2002, there have been 12 cases sanctioned until February 2016. At the level of necessity, the illicit transaction or relation inherent in corporate bribery must involve at least two actors, one who gives the bribe and one who receives the bribe. That said, of all the cases in the UK illustrated in table 1, none involved only one individual acting on behalf of the organisation. More likely, offenders will cooperate and collaborate through their social networks that may exist internally and/or externally to the corporation. These may be ephemeral and established when necessary or pre-existing and well-maintained, but in both cases the network is likely to be horizontally organised and flexible, rather than with a vertical structure and monolithic. In this sense, 'we need to organize our minds to understand how offenders cooperate' (Felson, 2006: 8). The nature of these cooperating networks shapes how finances are generated. Unless the bribery is organised and pervasive across the whole corporation, offenders must hide their illicit activities and the illicit finances from co-workers not involved in the bribery transactions. For example, legal enterprises are required to keep detailed records of their finances and transactions and so offenders must conceal (with co-offenders) their behaviour from possibly internal but certainly external actors – it is more straightforward to conceal illicit transactions in larger corporations and less so in smaller and medium sized enterprises, and it is in these latter cases where there may be more direct involvement by directors and boards. (Or at least evidentially, such awareness/involvement by the directing minds of the company is more easily demonstrated by law enforcement authorities in the courts). However, in corporate bribery, 'most bribes are paid by employees and agents, not top management' (Rose-Ackerman, 1999: 57)<sup>6</sup>.

Such deception, abuse of trust and concealment/conspiracy have been identified as common techniques for white-collar offenders more generally (Benson and Simpson, 2015). Some actors may become aware of the illegal activities of their colleagues but empirical evidence from analogous 'white-collar' crimes indicates that 'walls of secrecy and silence' can emerge where the cognitive dissonance, concerted ignorance, inaction in the face of knowing or the fear of the consequences of disclosure of colleagues can create conditions facilitative of the crimes, such as bribery, particular when the offenders are respected or central figures in the business (see van de Bunt, 2010). Those who do make disclosures, and/or compliance departments raising concern over such behaviours, may also be neutralised by corporate interests and threats. (There are analogies here with accounting frauds such as Olympus and Toshiba in Japan, or Enron and Lehman Brothers in the US).

Thus, when analysing the finances for bribery, legitimate corporations, or the employees acting on their behalf (e.g. ordinary employees, middle-managers, agents etc) that enter into bribery arrangements must calculate the funds required for bribes, whether a one-off transaction or as part of an on-going set of transactions, when opportunities arise through their business practices; and must conceal these illicit practices from colleagues and/or from routine detection mechanisms. Decisions to bribe are likely to be 'rational' (but bounded i.e. limited by normative awareness, ignorance, imperfect information or organizational cultures) calculations, as organisational economic interests guide the decision-making process of employees although organisational cultures may promote redefined parameters of acceptable behaviours (e.g. if neutralised in the light of competitor behaviour) or offenders may not be aware of legal requirements even when operating in high-risk jurisdictions. (This latter scenario undermines models of rational choice theories, even when it contains an element of wilful blindness 'if you don't ask, you won't find out what is not allowed'). Furthermore, in terms of the level of pervasiveness, corporate bribery rarely involves an isolated,

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<sup>6</sup> Top management might be more likely to be involved in cartels where they can deal out which bid will succeed on principles of reciprocity between repeat players.

discrete incident but rather a series of discrete incidents or is more systemic, reflecting an on-going state or condition, or series of illicit transactions: this determines how the finances will need to be generated.

In terms of the actual monies involved, it is clear that the finances needed for bribery are substantial. The overall sums of specific bribery arrangements (in the aggregate) in these cases range from £200,000 to £7.7m. While these figures in themselves are substantial, they can also be misleading as there are also known cases that have not resulted in sanctions where the alleged bribes totalled significantly more (e.g. see the dropped BAE Systems case where bribes of over £6bn were alleged (see Lord, 2014)). For purposes of comparison, other international cases have also involved substantial amounts: the Siemens scandal<sup>2</sup> prosecuted 2008 in Germany (and the US) involved bribes totalling approximately €1.3bn while the Elf Aquitaine scandal<sup>3</sup> prosecuted in France in 2003 involved the misappropriation of over €350m from the company by senior executives, much of which was used to bribe political decision makers. (Note that these bribes are a variable but sometimes modest sub-set of the harm done to the victims.)

Of course, these data relate to 'known cases' and this has obvious problems. For instance, those corporates more elusive of routine detection may utilise different *modus operandi* while case information is not always transparent or publically available, so understanding of the specifics is limited. Similarly, many cases that are 'known' may not have been sanctioned. Thus, it cannot be said how (un)representative these cases are of all cases of transnational corporate bribery, but we might reasonably assume that key features are likely to be evident across all cases. For example, an analysis of sanctioned cases in the UK indicates the following commonalities in terms of 'financial' organisation:

1. Inaccurate accounting records arising in relation to certain payment irregularities (e.g. Breach of s.221 Companies Act 1985) – *abuse of trust and concealment*.
2. Improper payments/inducements made via 'middle-men' or agents in corresponding countries. These payments cover costs/commissions of the agent/intermediary plus subsequent bribes, often determined as a percentage of the contract gained or product sales – *conspiracy*.
3. Monies transferred via corporate vehicles and complex financial structures such as offshore accounts – *deception and concealment*.

However, the purposes of a corporate bribe can vary and the form of bribes have been variously conceptualized and categorized, and this has implications for the type of finances required and how they are generated. For example, distinctions have been made between bribes that are 'according to rule' and bribes that are 'against the rule' (see Oldenburg, 1987). The distinction here refers to whether the underlying purpose of the bribe is to ensure the commission and/or omission of an act that a public official would otherwise undertake as part of their routine, daily activities, or not. 'According to rule' may involve a border official expediting the movement of lorries through checkpoints on receipt of a 'pay-off' (i.e. allowing legitimate lorries through borders is part of the official's occupational role), or the accelerating of an application process for the granting of a permit or license – as Rose-Ackerman (1999: 15) notes, '[s]ince time is money, firms and individuals will pay to avoid delay. In many countries a telephone, a passport, or a driver's licence cannot be obtained expeditiously without a payoff'. Such bribes are often characterised as 'petty', involve small value and usually take the form of cash transactions and are often normalised as part of common, cultural practice in those jurisdictions where they most frequently occur. The US does not criminalise such 'facilitation payments' bribery under the Foreign Corrupt Practices Act. In contrast, 'against the rule' requires the public official to breach their occupational duties, such as notifying a particular company of the details of competitor bids during the tendering process for public procurement contracts, or

awarding a contract to a company that is less suited to state/public needs than another in exchange for a bribe (i.e. the official is abusing the trust inherent of the occupational role). Such bribes are often characterised as 'grand', involve high value transactions that can take multiple monetary and non-monetary forms.

The particular form of the bribes themselves can vary. For example, we can distinguish between those that are of a monetary or money-equivalent nature and those that are not. An OECD paper analysed known cases of bribery in public procurement and demonstrated that a range of tangible benefits may be given including gifts, travel, entertainment, payment of domestic expenses, works in private homes, computers, jewels or expensive watches, free shares in companies and sexual services. However, 'money is always of interest because it is rapid, simple and practical. Also, the bribee need not wait for the bribe to be valuable as would be the case for stamps given to a stamp collector, for instance' (OECD, 2007: 47). The main types of monetary bribes include cash bribe/pay-off and commissions/fees. As the report indicates,

'[m]oney may be given in hand; but money is most frequently transferred to the official's account or an account designated by the official (e.g. a third party beneficiary). The account may be located in a foreign bank, perhaps in an offshore centre. Bribers may also give the bribee or a third party free disposal of a credit card on a company's account or offer free shares in a company. Finally, a case was presented where the bribe was organised via a loan that was never reimbursed. The types of arrangement in these last two examples are considered particularly difficult to detect and investigate' (OECD, 2007: 47).

Thus, cash bribes may be taken from large commission fees paid to the third-party, may be regular payments to encourage officials to turn a blind eye to illegal activities (drugs/people/mineral smuggling, etc), or may be stand alone, one-off payments for a specific act or omission. The purpose of the pay-off may sometimes go beyond the inducing of, or acceleration of, a specific act or omission and intend to acquire the official for an extended period of time. (An exclusive focus on individual transactions would be a mistake, since bribes can be part of a cumulative process, and it may be hard for individuals who once 'fall' to get out of future transactions since they may be susceptible to blackmail.) Synonyms of 'pay-offs' include kickbacks, grease-money, baksheesh, etc. Commissions usually take the form of a percentage of the money received for a given transaction or as a sum to the responsible agent or intermediary. Cash or valuable considerations such as businesses, real estate or securities and may involve written contracts that appear to be lawful.

We can distinguish between the direct and indirect costs of bribery. Direct costs include the amount required for the bribe itself, whether cash or other monetary value (e.g. shopping trips, hospitalities etc). Cash poses particular questions over how offenders are able to conceal from or deceive colleagues when withdrawing cash from corporate accounts, or involve them as conspirators, even if they are simply following instructions. However, in the current legal environment of anti-money laundering, potential theft allegations and the Bribery Act, it is hard to see how accounts staff can easily go along with this undetected, even if they are disincentivised by the fear of dismissal or non-promotion to ask questions of their senior executives. Nonetheless, in such cases, offshore accounts and shell firms can obscure the transfer of monies cross-jurisdictionally in order to protect beneficial owners of particular accounts but also enable corporations and offenders to move money electronically, hidden as ambiguous (and creative) accounting/financial transactions (e.g. 'services', 'commissions' etc) before cash is withdrawn in less regulated systems and directed to foreign public officials. Indirect costs include the company resources required such as the investment of time by employees away from wholly legitimate business activities or the use of company equipment and technologies. Time and material resources are required for the bribery: planning, commission, post-crime risk management, concealment of profits and so on all require resourcing. Other indirect costs

may be actual regulatory fines and criminal penalties, plus supervision costs: but these accrue only if and when action is taken. (Regulators, prosecutors and judges can also sometimes be bribed.)

It is not possible to estimate the figures involved in all direct and moreover indirect costs. Indirect costs don't really have to be paid specifically – and to the extent that the bribes are for the firm and get the business, they are balanced against the benefits. However, understanding the wider finances involved in bribery is important for when we begin to consider how to reduce bribery from taking place (see below). In both cases, bribes that originate with particular corporations must be accounted for even if they are distributed via third parties and obscure accounting practices but some records must exist given the finances are generated from pre-existing income from legitimate means (at least in the primary/initial bribery transaction). Financing crime is inhibited by risks both of losing the investment and introducing criminal liability to those who otherwise would not face it (Levi, 2015: 3).

## The Finances From Transnational Corporate Bribery

This section aims to answer a further three questions:

- D. What are the different forms of proceeds that emerge out of the bribery?
- E. How do offenders conceal the derivation of funds from these crimes while also retaining control over them?
- F. How do they overcome particular obstacles and problems posed by controls?

While the finances required for bribery are substantial, it is logical to assume that the finances generated out of the bribery are at least equal, but likely even greater, otherwise the illicit transaction has no economic rationality. The finances from transnational corporate bribery at the 'grand' level most frequently include direct and tangible advantages such as the awarding of a business contract or the granting of a particular permit for business operations. The value of such tangible outputs can be determined through assessing, for instance, the value of the contract obtained or the potential business generated through access to a particular market or area although the latter scenario presents greater valuation obstacles than the former. In terms of the known cases in the UK, table 1 indicates contracts worth up to £100m have been received as a result of bribery and these figures outweigh the direct costs of the bribery itself.

While such advantages are direct, in some cases it can be difficult to ascertain their financial value, particularly when assessing the value of gains from low-level 'petty' corruption or 'facilitation payments' but in all cases, some form of monetary advantage is obtained. Facilitation payments in reality increase business operating costs, as payments may be unexpected and inconsistent (although it is likely risk assessments undertaken by corporations would identify such possibilities). In the aggregate these 'bribes' can be costly but, in contrast to the financial gain at the high-end, they remain worthwhile 'expenses' as contracts in the £millions substantially outweigh facilitation payments in the £hundreds or £thousands.

Tangible advantages may also be more indirect such as the creation of fees, dividends and revenues provided by subsidiaries that were directly involved in the bribery. In the cases of Amec and Oxford Publishing, while these companies were not direct perpetrators, their associations through ownership structures generated financial gain. Similarly, in the case of Mabey and Johnson, the SFO was able to agree a repayment settlement of the benefits received via dividends for the shareholder that amounted to £131,201 under Part 5 of the Proceeds of Crime Act 2002: this demonstrated that even if unaware of the criminal behaviour, firms can be made subject to civil action<sup>4</sup>.

Corporate offenders do not always specifically 'launder' the finances generated from bribery in the

commonly understood sense of the concept (i.e. referring to the need for criminal proceeds to be legitimised or integrated into the established financial system). Advantages and profits are automatically returned as part of an otherwise legitimate business transaction that could have occurred with or without the bribery. If the bribery itself remains hidden, there is no action: rather, the difficulty is ensuring that funds handed over to third parties or targets actually are used for the goals intended by the briber. If the goals intended are not met, the briber has little opportunity for recourse as they can hardly notify formal authorities to seek compensation. The key issue is for offenders to keep the bribery concealed and retain control over these monies (see Levi, 2015: 10). Little attention has been paid to the risks of being complained about by losing bidders for contracts, for example, but there remains also a risk from internal corporate whistleblowers, from auditors and from bankers and others making suspicious activity reports which may (or may not) be followed up by criminal investigators. Managing such risks may itself incur further costs should colleagues or other 'regulators' need paying off.

Methods of concealment are shaped by how pervasive and organized the corporate bribery is. We might consider offenders' position in hierarchical organisational corporate structures such as whether the bribery involves 'ordinary employees', 'middle-managers', and/or senior board level employees and executives. This would shape the available opportunities for concealment and practices and cooperation that would be required. For example, if illicit profits were directed via the use of corporate vehicles, then this would likely require senior collusion and notable organisational support/ignorance and it can be expected that offenders' behaviours in such cases would require a certain level pre-planning to ensure that profits and gains can be concealed. To conceal the profits, some form of collusion and/cooperation with external actors such as accountants and lawyers may be required to facilitate these processes, though informational shielding and distortion may reduce the risks from them. As Levi (2015: 10) notes, 'this involves trust in a particular person or persons — perhaps a member of one's close or extended family or ethnic/religious group — or trust in an institution, such as a bank or a money service business (MSB) or a lawyer who may be a trustee of a corporate entity, to an extent sufficient to defeat whatever level of scrutiny will actually be applied'.

Trust is central across the process of the illicit transaction, as offenders may abuse the trust given to them by employers or shareholders (unless they are 'amoral' and have no conception of such abuses), but must also trust others themselves to ensure the bribery is sufficiently concealed and profits usefully diverted and controlled. Rose-Ackerman (1999: 98) notes, 'the ability to establish trust based on close personal relationships helps reduce the risks of disclosure...[and]...provides a guarantee of performance when payment and quid pro quo are separated in time'.

Those at the demand-side of the transaction or relationship may need to conceal the origin of the funds if they wish to use them within legitimate financial structures (rather than simply spend the money or sink it into less surveilled assets). A recent Financial Action Task Force (2011) report created a 'typology' on laundering the proceeds of grand corruption (more of a categorization based on anecdotal evidence, rather than an empirically/theoretically informed set of 'types') and identified the following central mechanisms that can be used to facilitate this process: The use of (1) corporate vehicles and trusts, (2) gatekeepers (i.e. facilitators and enablers), (3) domestic financial institutions, (4) offshore/foreign jurisdictions, (5) nominees, and (6) cash. The concern in the report is with 'grand corruption', defined by TI (2015b) as consisting 'of acts committed at a high level of government that distort policies or the central functioning of the state, enabling leaders to benefit at the expense of the public good', and politically exposed persons (PEPs). There are clear commonalities in the modus operandi of control and concealment by both briber and bribee.

While the focus in this article is primarily on the supply-side (i.e. UK companies), the UK system is currently being scrutinised in relation to the structures provided in the UK for those at the demand-

side, as '[c]orrupt foreign officials seek to launder the proceeds of their corruption and hide stolen assets in the UK' (HM Government, UK Anti-Corruption Plan, 2014: 19). Particularly issues of concern relate to the UK property market and difficulties in establishing the 'beneficial owners' of companies and accounts that are being used to purchase assets in the UK (see Global Witness, 2013). As the UK Anti-Corruption Plan (2014: 45) states:

'Numerous studies have identified the role of company misuse through hidden ownership in facilitating money laundering and corrupt activity. The UK has therefore committed to enhance transparency around who ultimately owns and controls UK companies (the company's 'people with significant control' or 'beneficial owners'). This will ensure that law enforcement and tax authorities have access to information which will help tackle corruption, tax evasion and the laundering of the proceeds of crime.'

The Fourth EU Anti-Money Laundering Directive<sup>7</sup> (2015) defines beneficial ownership as 'any natural person(s) who ultimately owns or controls the customer and/or the natural person(s) on whose behalf a transaction or activity is being conducted'. A 'beneficial owner' is 'a natural person – that is, a real, live human being, not another company or trust – who directly or indirectly exercises substantial control over the company or receives substantial economic benefits from the company' (Global Witness, 2013: 3) – key features therefore are the control exercised and the benefit derived (van der Does de Willebois et al., 2011: 3). A detailed analysis of 213 grand corruption cases between 1980 and 2010 identified that over 70% (150) involved the use of at least one corporate vehicle that concealed, at least in part, beneficial ownership. In total, 817 corporate vehicles were used in those 150 cases and the UK, its crown dependencies and overseas territories, was the jurisdiction with the second highest (after the US) number of registered corporate vehicles (see van der Does de Willebois et al., 2011). Furthermore, such corporate vehicles are being used to 'launder' corrupt monies via the UK's property market where more than 100,000 property titles totalling £122bn in value in England and Wales are registered to overseas companies, including over 36,000 properties in London, with no record of the beneficial owners (Financial Times, 2015; see for an online dataset, <http://www.private-eye.co.uk/registry>).

Prime Minister David Cameron pledged to respond to the issue of properties 'being bought by people overseas through anonymous shell companies, some with plundered or laundered cash' going on to state '[t]here is no place for dirty money in Britain' (Cameron, 2015). The UK's proposed Central Register of Beneficial Ownership, as stipulated in the Small Business, Enterprise and Employment Act 2015, will require UK companies to identify those persons with significant control over them in order to increase transparency. This will create an obstacle for those seeking to conceal and hide illicit monies intended for or generated from corporate bribery.

A further related issue here is that financial institutions such as banks are 'far too willing to do business with anonymous companies' (Global Witness, 2013: 7) and here we might also include other legitimate professionals and organisations such as legal, accountancy, and other related fiduciary firms. The Serious Crime Act 2015 has attempted to shift criminal accountability towards such 'facilitators' and 'enablers' of criminal behaviour by criminalising even the unwitting awareness of their facilitations (e.g. lack of due diligence) and increasing potential sanctions but the role of such facilitators remains under-researched (see Middleton and Levi, 2015, for an analysis of the roles of lawyers in facilitating organised crime, and Campbell (2015) for detailed analysis of s.45 of the Act).

In view of these laundering techniques, we might also consider the problems and obstacles that offenders must confront in order to be successful and these include the 'nature of the detection, reporting and the investigative regime that is in place' (Levi, 2015: 10). For example, 'the identification

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<sup>7</sup> <http://eur-lex.europa.eu/legal-content/EN/TXT/?uri=celex%3A32015L0849>



of “suspiciousness” by professionals and others with a legal responsibility to combat money laundering is often a judgment that the people and/or transactions are “out of place” for the sort of account they have and the people they purport to be’ (Levi, 2015: 10). However, as discussed earlier, a key feature of such offending behaviour is the appearance of both respectability of the offenders and legitimacy of the business practices involved: these generate both cultural and technical obstacles to detection.

## Intervening with ‘organisation’ to reduce opportunities for bribery

Understanding how the finances for and from bribery are organised as presented in this article, we can begin to analyse and develop actual and potential mechanisms for intervening with the processes/opportunities and situations that are necessary to the bribery commission process in order to reduce future bribery transactions from taking place. Analysing the scripts of complex economic crimes in this way is necessary for designing strategic prevention measures that have lasting reduction effects on crime (Chiu et al., 2011). Central to thinking in terms of situational prevention are assumptions about the economic rationality of the offenders involved (see Benson et al., 2009; Cornish and Clarke, 1986). While we suggest that such models of economic rationality deriving from individual decision-making – most commonly by ‘outsider’ criminals - are more difficult to apply in the context of furthering otherwise legitimate complex organisational goals, thinking in terms of altering the situations can nonetheless reduce offending behaviour. We are not arguing that these are the only ways of reducing corruption, but it is therefore useful here to consider how models of situational crime prevention can be applied to the finances involved in transnational corporate bribery (see table 2).

### TABLE 2 ABOUT HERE

To express the issues simply, ‘crimes, including white-collar crimes, are more likely to occur if they are easy to commit, have low risks of detection, provide an attractive reward, are encouraged by the immediate environment, and are easy to justify’ (Benson et al., 2009: 183). These are also ‘crimes of specialised access’ (Felson and Eckert, 2015) and as Cressey (1953) argued, every accountant can commit embezzlement. Likewise bribery is relatively easy to commit given access to legitimate occupational roles and resources (e.g. those responsible for acquiring and negotiating sales contracts are likely to come into contact on a frequent basis with those with decision-making responsibility in the tendering process, and it is therefore straightforward to identify potential targets). Businesses operating in jurisdictions where enforcement frameworks and infrastructures are less developed than that of the UK or other relatively active jurisdictions encounter low risks of detection (and even where reported to a Financial Intelligence Unit (Levi, 2012) or detected by the authorities, the obstacles to prosecution may be too great (see Lord, 2014b)); while internal compliance systems and policies may be accidentally or intentionally under-resourced or are commonly culturally subordinate to the primary organisational goals of obtaining business and increasing sales. Furthermore, as bribes can be concealed as legitimate transactions, they are unlikely to be scrutinised in-depth unless other activities (including media stories) raise concerns. Even where the rewards from bribes mostly benefit the firms, staff benefit personally from the survival of the firms or from personal performance bonuses/promotions, and subcultural support is easily built up when there are few external behavioural challenges.

Table 2 addresses these five issues, identifying mechanisms and techniques for the reduction of bribery by targeting the finances for and from the bribery. Mechanisms of situational prevention are already being implemented and these take many forms, while some require development. The mechanisms identified here address the necessary and contingency factors shaping offending

behaviour at the social-structural/cultural, institutional and individual levels discussed earlier. Many of these reduction/prevention strategies involve a high level of state involvement or initiation and may appeal to some regulators/investigators more than others. For example, the Serious Fraud Office does not have a formal remit for proactive strategies of prevention but is primarily a reactive investigation and prosecution authority. Alterations to legal frameworks and requirements, such as the introduction of the beneficial ownership register may inform their investigations and prosecutions by providing access to more transparent corporate relations: but such a mechanism will also increase the effort required for offenders to conceal their illicit monies. However, corporations are perhaps best placed to intervene with the immediate offending environments and/or shape the cultures that in turn encourage individuals to bribe. For example, by increasing levels of guardianship over how corporate finances are moved internally and externally to their immediate business, or by removing the available rationalisations of individuals, bribery can be reduced.

## Conclusion

In sum, the intention in this article has been to analyse how the funds for and from transnational corporate bribery are organised. This is needed to direct attention to those locations, practices and relations that are necessary to the transaction and which can subsequently be intervened in line with models of situational prevention. These are features of bribery that often remain hidden and are easily concealed behind or within the otherwise routine, daily activities of the offenders involved which in turn creates obstacles to routine detection mechanisms. By addressing the five areas of situational intervention discussed above there is scope to reduce opportunities to offend or reduce the likelihood that offenders will opt to capitalise on such opportunities. However, while this article has offered theoretical and conceptual insights into the organisation of the finances of corporate bribery, there is a clear need for empirical inquiry to provide evidence-based interventions and subsequent evaluation of good practice.

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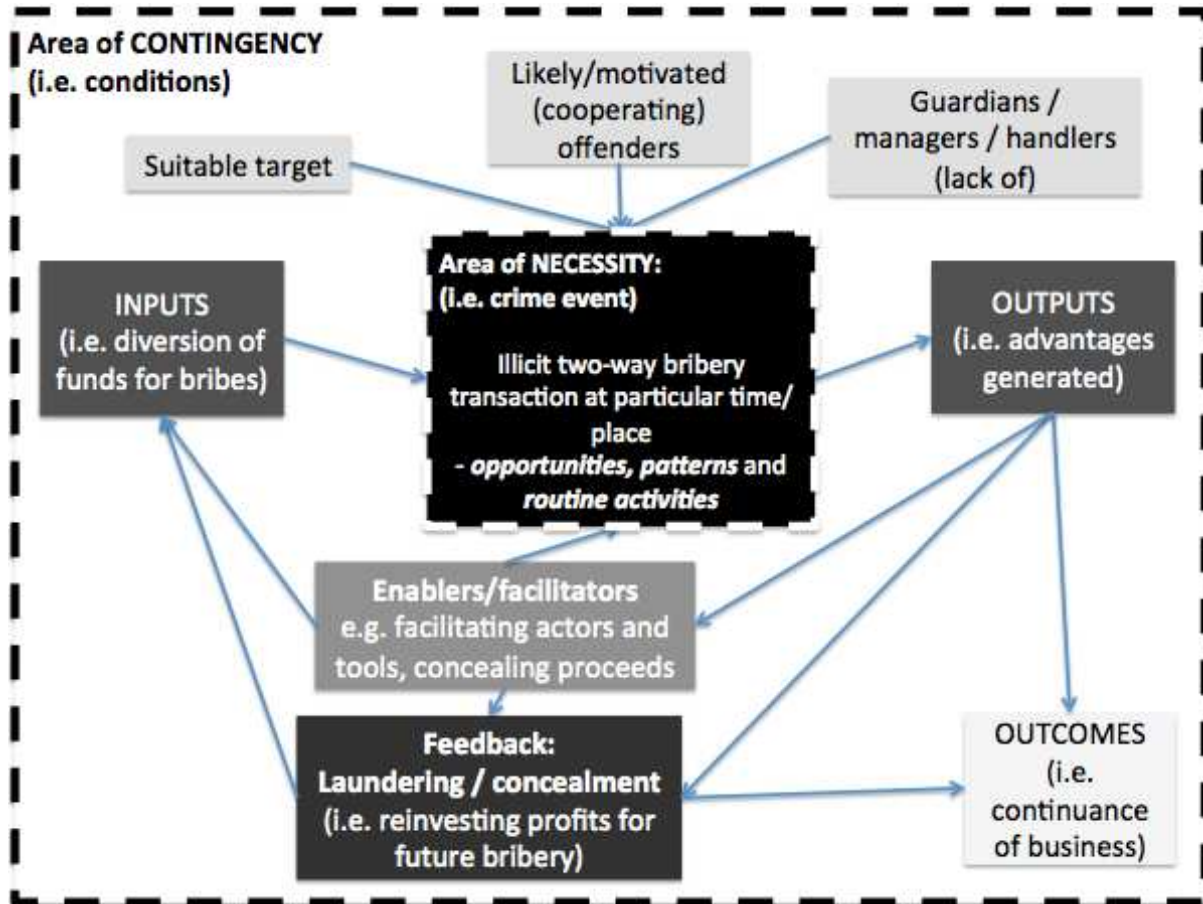


Figure 1: Areas of necessity and contingency in the commission of bribery



Table 1: The finances of transnational corporate bribery

Sanctioned Business (Criminal and civil) –	Nature of case	Sanctioned Offence	Direct costs of bribe	Business advantage obtained	Financial penalty
<b>Balfour Beatty</b> SFO - 2008	Payment irregularities during execution of construction project in Egypt.	Inaccurate accounting records in breach of s.221 Companies Act 1985	Unspecified	- No apparent financial benefit. - Alleged construction contract worth £100m.	Civil recovery of £2.25m plus unspecified prosecution costs
<b>Amec Plc</b> SFO - 2009	Receipt of irregular payments associated with a project in which AMEC is a shareholder.	Breach of duty to keep accounting records contrary to s.221 Companies Act 1985	N/A	Approximately £5m received as a result of bribery and corruption elsewhere in a project in which AMEC is a shareholder.	Civil recovery of £5m plus costs
<b>Mabey and Johnson Ltd</b> SFO - 2009	Corruptive payments to influence decision-makers in public contracts in Jamaica and Ghana. (Also sanctioned for breaching UN sanctions in Iraq).	Conspiracy to corrupt contrary to s.1 Criminal Law Act and s.1 Prevention of Corruption Act 1906	£470,000 to Ghana £300,000 to Jamaica (£420,000 to Iraq)	Total revenue of approximately £38m	£6.6m in fines, reparations and costs.
<b>BAE Systems</b> SFO - 2010	Failure to keep adequate accounting records of corruptive commission payments relating to the sale of an air traffic control system to Tanzania	Breach of duty to keep accounting records contrary to s.221 Companies Act 1985	£7.7m	£28m in radar contracts with the Tanzanian military.	£500,000 criminal fine plus £225,000 prosecution costs.
<b>Innospec</b> SFO - 2010	Corruptive payments to public officials of the Government of Indonesia to secure contracts for sale of tetraethyl lead.	Conspiracy to corrupt contrary to s.1 Criminal Law Act and s.1 Prevention of Corruption Act 1906	Approximately \$8m	Up to \$160m in contracts and benefits.	\$12.7m incorporating confiscation order and civil recovery plus prosecution costs.
<b>DePuy International Ltd (UK subsidiary of Johnson and Johnson in the US who also faced bribery charges)</b> SFO - 2011	Corruptive payments to Greek medical professionals relating to the sale of the orthopaedic products.	Not specified. No corporate criminal prosecution so to avoid 'double jeopardy' as company criminally sanctioned in US. Former Director John Dougall prosecuted for conspiracy to corrupt contrary to s.1 Criminal Law Act 1977 and s.1 Prevention of Corruption Act 1906.	£4.5m - Covered cost of commission to agents plus subsequent bribes	Retention and enhancement of market position. Greek government paid approximately £33.5m to DePuy for products (£14.8 passed back to DePuy, £14.8m represents unlawfully obtained property).	Civil recovery of £4.829m plus unspecified prosecution costs (plus fines of US parent company Johnson and Johnson). Recovery limited by SFO in light of US fines.
<b>MW Kellogg Ltd</b> SFO - 2011	Used by US parent company to distance itself from a special purpose vehicle used to make corruptive payments to Nigeria.	No predicate offence. Civil recovery under Part 5 Proceeds of Crime Act 2002	N/A	N/A	Civil recovery of £7m in recognition of sums MW Kellogg due to receive from criminal activities of third
<b>Macmillan Publishers Ltd</b> SFO/DACU - 2011	Corruptive payments to influence public tender processes in Rwanda, Uganda and Zambia for the supply of educational	Not specified beyond general corruption offences	Unspecified	Contracts to supply products (educational materials) valued at approximately £11.2m.	Civil recovery of £11.2m plus prosecution costs.
<b>Oxford Publishing Ltd</b> SFO - 2012	Kenyan and Tanzanian subsidiaries of company offered and made payments, directly and through agents, intended to induce the recipients to award competitive tenders and/or publishing contracts for schoolbooks.	Not specified beyond general corruption offences. S.266 Proceeds of Crime Act used for civil recovery.	Unspecified	Unspecified but dividends and fees paid by subsidiaries to OPL, and therefore revenue created, from bribery and corruption.	Civil recovery of £1.9m plus prosecution costs.
<b>Smith and Ouzman Ltd.</b> SFO - 2014	Corruptive payments to influence the award of business contracts (related to security documents e.g. ballot papers) to the company in Mauritania and Kenya.	Conspiracy to corrupt contrary to s.1 Criminal Law Act 1977 and s.1 Prevention of Corruption Act 1906.	£395,074	Award of contracts of unspecified amount.	£2.2m. Individuals have been sentenced.
<b>Standard Bank</b> SFO - 2015	Failure to prevent bribery by its sister company, Stanbic Bank Tanzania, to a local partner in Tanzania, Enterprise Growth Market Advisors (EGMA) to induce members of the Government of Tanzania.	Failure of a commercial organisation to prevent bribery contrary to Section 7 of the Bribery Act 2010	US\$6m	Gained favour for a proposal for a US\$600 million private payment to be carried out on behalf of the Government of Tanzania. The placement generated transaction fees of US \$8.4 million, shared by Stanbic Tanzania and Standard Bank.	Deferred Prosecution Agreement (DPA) including payment of compensation of US\$6m plus interest (US\$1m), financial penalty of US\$16.8m, payment of costs of £330k and disgorgement of profit of US \$8.4m. (Plus various structural reform requirements).
<b>Sweett Group</b> SFO - 2016	Failure to prevent bribery by its subsidiary company intended to secure and retain a contract with Al Ain Ahlia Insurance Company in the UAE.	Failure of a commercial organisation to prevent bribery contrary to Section 7(1)(b) of the Bribery Act 2010.	Not specified	Not specified.	£1.4m criminal fine plus £851k in confiscation and £95k prosecution costs.

**Table 2: Situational Prevention Mechanisms for the Finances of Transnational Corporate Bribery (Actual – A; Potential – P)**

Effort required	Risks of detection	Rewards to be gained	Conducive situational	Offender excuses
Increasing transparency of corporate vehicles with introduction of 'company beneficial ownership register' from January 2016 to ensure monies used for bribery more difficult to conceal in complex financial structures (A)	Increased 'guardianship' over movement of corporate finances e.g. requiring lawyers, accountants, auditors [but not <i>internal</i> auditors] to notify law enforcement authorities where suspicious transactions evident (P)	Enforcement responses that remove financial gain from bribery transaction: - Civil recovery (A) - Disgorgement of profits (A) - Disbarment from future contracts (A) - Withdrawal of contracts won through bribery (P) - Confiscation Orders (A) - Asset freezing (A)	Identify 'routine', daily activities of those in occupations likely to be involved in bribery and intervene with opportunities e.g. remove sole decision-making responsibilities to require various levels of approval when moving finances (P)	Remove available rationalisations / neutralisations by having clear and consistent cultural principles and goals (P)
Implementation of 'certified' anti-bribery and corruption compliance systems that are regularly monitored and adapted and which require the clear justification of and individual accountability for all financial transactions (A)	Risk assessments of foreign jurisdictions for potential bribery and opacity of financial transactions conducted by corporations or third-party experts (e.g. how is the risk of corruption determined?), and analysing the extent to which these risk assessments change over time and why (P)	Targeting facilitators and enablers of illicit money transactions through criminal justice mechanisms e.g. Serious Crime Act 2015 (A)	Companies to ensure that suspicious transactions are dealt with internally with celerity, certainty and appropriately severe sanctions and where appropriate law enforcement notified (P)	Education of employees on actual and potential victims (A)
Analysis of 'big data' anomalies in employee and financial activities particularly around the 'edges' of 'paths' where bribery likely to occur e.g. unusual diversion of finances (P)	Increased state regulation around high value products/ markets i.e. intelligence-led focus on 'paths' used most often and by more companies (P)	Redefinition of internal bonus cultures within corporations in line with social responsibility to move risk-reward structures (P)	Provide employees with ability to direct those demanding bribes to company anti-corruption policies to remove discretion of individual employees (P)	Expert advice from overseas FCO representatives/ diplomats over business activities in risky jurisdictions (A)
Public disclosure of country-by-country reporting of financial performance broken down into production, profits, sales and costs to enable transparency of contracts and discrepancies to be identified (P)	International/regional taskforces facilitating information sharing, knowledge transfer and cooperation on money flows - open data sources to LEAs (P)	Ensure offenders lose professional status and are prosecuted or excluded from future similar occupational roles where sufficient evidence available (A)	Evidence-based analysis of at-risk organisational levels, occupational positions (e.g. high contact with foreign officials), departments (e.g. telecommunications, construction, etc.) and employees (e.g. executives, middle managers, low-level employees) where finances could and would be diverted for bribery (P)	Compulsory data collection by corporations on bribery (P): - Frequency (e.g. how often are bribe requests made to the company) - Intensity (e.g. how insistent are bribe requests) - Intention (e.g. facilitation of otherwise legitimate service, to win or maintain business contracts, to be accepted in the tendering process, etc.) - Type (e.g. cash bribes, services, hospitality, etc.) - Extent to which these factors change over time and correlate to different localities
Increased commitment to transparency of money flows within British Overseas Territories and Crown Dependencies (P)	Open publication of financial details of all public contracts for scrutiny by non-commercial and non-state organisations (P)			

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<sup>1</sup> Third parties like banks are given some motivation by anti-money laundering responsibilities, but may be subverted by personal and/or institutional benefits or fears of loss of business. Others may see what is going on but not care, because of intimidation or a cut in the corruption, or by belief that the funds are going to a good political cause (e.g. the South African ANC).

<sup>2</sup> <http://www.ft.com/cms/s/0/1cc029de-cae9-11dd-87d7-000077b07658.html#axzz3j5M7qLJm>

<sup>3</sup> <http://www.theguardian.com/business/2003/nov/13/france.oilandpetrol>

<sup>4</sup> <http://www.sfo.gov.uk/press-room/latest-press-releases/press-releases-2012/shareholder-agrees-civil-recovery-by-sfo-in-mabey--johnson.aspx>